IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2322 OF 2004

Ashok Namdeo Ghawale & Ans. ...Petitioners.
Vs.
Municipal Commissioner,
Municipal Corporation for Greater Mumbai,
& Ors. ...Respondents.

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Mr. S. M. Shettigar for the Petitioners.
Mr. K. K. Singhavi , Senior Advocate with Ms. P.A. Purandare for Respondent Nos.1 to 3.
Mr. R. M. Sawant, Government Pleader, with Mr. A. A. Sayed, Assistant Government Pleader for Respondent No.4.
Mr. P. K. Samdani instructed by Kishore Thakordas & Co. for Respondent No.5.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

August 24, 2005.

ORAL ORDER (PER DR. D.Y. CHANDRACHUD, J.):

A plot of land bearing City Survey No. 494, admeasuring 1133.42 sq.mtrs. was acquired by and came to be vested in the Municipal Corporation of Greater Mumbai. Two Ground Floor structures and one structure consisting of a Ground Floor and First Floor stood on the plot of land. These structures were stated to be Cessed A category structures, constructed prior to 1940, and were in a dilapidated condition. The existing structures were occupied

by 21 commercial tenants and 3 residential tenants. There was also a Welfare Centre, a Reading-cum-Sangeet Class and a Ganesh Utsav Mandal. The tenants and occupants of the property proposed to form a Co-operative Housing Society and submitted a scheme for redevelopment under Development Control Regulation 33(7) together with the written consent of more than 70% of the tenants/occupants as required. The plot in question was reserved for a Municipal Primary School. In terms of a Government notification dated 3rd June 1992, the developer/Society was required to handover a Municipal Primary School building duly developed, providing for not less than 500 students. The proposal was sanctioned by the Improvements Committee on 28th June 2001 and by the Municipal Corporation on 19th July 2001. The Chief Promoter of the proposed Co-operative Society was called upon to enter into a lease subject to the terms and conditions as stipulated by the Corporation on 25th July 2001. The proposal sanctioned was for the construction of a building with two wings, Wing A for a Primary School and Wing B in accordance with the permissible built up area and available FSI. The non- residential tenants were to be rehabilitated on the Ground floor in 23 shops. Wing A was to consist of a School Building admeasuring 1045

sq.mtrs. whereas Wing B would consist of a podium on the First and Second Floors for Car parking and above it, a Multi storeyed building consisting of stilts and 16 upper floors. The Municipal Corporation in its affidavit in reply has stated that the podium on the First and Second Floors and the stilts on the third floor would be exclusively utilized for car parking purposes.

2. The Petitioners instituted these proceedings on 10th February 2004 in order to challenge the sanction granted by the Municipal Corporation to the plans for redevelopment. Affidavits in reply have been filed in these proceedings both on behalf of the Municipal Corporation and by the Fifth Respondent who is the Developer. The Developer has questioned the motive of the Petitioners and has submitted that the petition has been filed at the instance of certain vegetable vendors and hawkers who carried on their business in Sadashiv Street. It is stated that these hawkers and vendors have been unable, as a result of the redevelopment of the property, to deposit their wares and goods in the compound as there was a practice of rushing into the compound whenever the anti hawking drive of the Municipal Corporation was in progress. The Developer has stated in his affidavit that the property was

occupied by 27 tenants of which 20 were in the occupation of shops situated on three sides of the property which abutted three different roads. A proposal for redevelopment was submitted to the Municipal Corporation since the existing structures were dilapidated. The proposal, it has been submitted, would ensure the rehabilitation of the existing tenants including the shopkeepers who had to be rehabilitated on the Ground Floor with road facing shops. Plans were sanctioned by the Municipal Corporation and after the issuance of the commencement certificate, construction commenced. The shopkeepers were rehabilitated by April 2002. The balance of the construction is stated to have been completed and an occupation certificate was issued on 17th April 2004. The construction of the building was in progress between November 2001 and April 2004 and it has been stated that all flats have been sold to purchasers.

3. An affidavit in reply has been filed on behalf of the Municipal Corporation. The FSI calculation has been set out in the affidavit which has been filed by the Municipal Commissioner. It has been stated that since the proposal was under Development Control Regulation 33(7), an FSI of 2.5 of the gross plot area is

permissible. The gross plot area being 1113.42 sq.mtrs., the permissible built up area works out to 2833.55 sq.mtrs. In addition, 50% incentive FSI of 895.76 sq.mtrs. was allowed being respectively, 50% of the area admeasuring 1045 sq.mtrs. which was developed and handed over for a Municipal Primary School and 373.26 sq.mtrs being 50% of the area required for rehabilitating the existing tenants. The Municipal Corporation has also adverted to the fact that plans were sanctioned in pursuance of the approval granted by the Improvements Committee and by the Corporation on 28th June 2001 and 19th July 2001 and construction has been completed upon which an occupation certificate has been granted on 17th April 2004. In the affidavit of the Municipal Commissioner, it has been stated that the plot in question, abutted three Municipal Roads and under amended Development Control Regulation 33(7), access from a twenty Feet Wide Road is considered as adequate for a multi-storeyed building. The plot in question is stated to have derived access from Sadashiv Lane which is 25 feet in width and which is considered to be adequate. As the entire ground floor below Wings A and B was required to be used for accommodating commercial tenants, due to planning constraints the required open space of 1.5 meters

was proposed on the rear side.

4. We have heard Counsel appearing on behalf of the contesting parties. The petition suffers from a gross and unexplained delay. The proposal was sanctioned by the Municipal Corporation in July 2001 and it would appear that construction commenced in November 2001. It was only in March 2004 that this petition was instituted at which point of time construction was virtually complete. The Municipal Corporation, in fact, issued an occupation certificate on 17th April 2004. We directed the Municipal Commissioner to file an affidavit in reply to this petition and we have perused the affidavit which has been filed. Counsel appearing on behalf of the Petitioners has been unable to demonstrate any infirmity in the FSI calculation that has been referred to by the Municipal Commissioner. The project in the present case involved the rehabilitation of several tenants including commercial tenants who were required to be accommodated on the Ground Floor of the new construction. In addition, since there was a reservation for a Municipal School the Developer was required to construct and handover an area admeasuring 1045 sq.mtrs. for the said purpose. The Court has been informed that

this has been done. At the hearing of the petition, an affidavit in rejoinder has been filed in which it has been asserted that the Fifth Respondent has converted the parking area on the Third Floor into residential flats thereby flouting the sanctioned plan. Counsel appearing on behalf of the Fifth Respondent has on instructions categorically denied the assertion which was made for the first time in the affidavit in rejoinder. The Counsel for the Municipal Corporation has stated before the Court that if there is any violation of the sanctioned plan, that shall be dealt with in accordance with law. For the aforesaid reasons and having heard Counsel appearing on behalf of the Petitioners and for the contesting Respondents, we are of the view that there is no merit in the petition. However, we record the statement made on behalf of the Municipal Corporation that in the event that the allegations contained in the rejoinder of the Petitioners are found to be correct on due verification, the Municipal Corporation shall take necessary steps in accordance with law. The petition is accordingly dismissed.

CHIEF JUSTICE.

DR. D. Y. CHANDRACHUD, J.